IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.977 OF 1989

Manthana wife of Vasant Patil
Rakhi Vasant Patil ...Appellants

vs.

The Maharashtra State Road Transport
Corporation, Bombay ...Respondent

Mr.S.M.Oak for the Appellants
Mr.G.S.Hegde for the Respondent.

CORAM: A.S.OKA,J.
DATE : JANUARY 17,2007.

ORAL JUDGMENT:

1. Heard Advocates appearing for the parties. The Appeal is by the original claimants in a Claim Petition under section 110-A of the Motor Vehicles Act,1939. The deceased Vasant died in an accident occurred on 15th March 1985. The deceased was employed with M/s.G.G.Dandekar and Company.

2. The deceased along with his brother-in-law were travelling by a motor cycle. The deceased was occupying the pillion seat. The motor cycle was stopped at a petrol pump. The motor cycle was proceeding from Bhivandi to Thane. When the motor cycle entered the road from the petrol pump, the allegation is that a bus of the Respondent corporation gave a dash, as a result of which deceased was thrown from the motor cycle and received serious injuries. The Respondent filed a written statement and contended that there was no negligence on the part of the driver of the bus. The driver was driving

the bus in a moderate speed and was observing the traffic rules. Without giving any signal and without observing the rules of traffic, the brother-in-law of the deceased brought his motor cycle on the highway as a result of which the motor cycle was knocked down the bus.

3. By the impugned Judgment and Award, the learned Member of the Tribunal awarded a compensation of Rs.54,400/- with interest at the rate of 12% p.a. The learned Member of the tribunal held that both the driver of the bus as well as the motor cyclist were responsible for the accident. That is the reason why the learned Judge awarded compensation of Rs.54,400/- after making a deduction on account of negligence on the part of the motor cyclist. The learned Member of the Tribunal held that the Respondent was liable only to the extent of 40% of the compensation. There is no Appeal preferred by the Respondent against the impugned Judgment and Award.

4. The learned Advocate for the Appellant invited my attention to the evidence on record. He submitted that the negligence was entirely that of the driver of the bus. He submitted that the bus came on its wrong side and that is the reason why it dashed against the motor cycle. He submitted that the compensation awarded is on the lower side and the same needs to be enhanced. The learned Advocate for the Respondent supported the impugned Judgment and Award and

submitted that no interference is called for.

5. I have considered the submissions. I have perused the evidence. So far as the issue of negligence is concerned, it is necessary to refer to the evidence of the witness No.3. examined by the Appellant. The said Witness No.3 is one Latifkhan Lal Khan. He stated that he was travelling by the said bus of the Respondent-Corporation. The bus was proceeding from Bhivandi towards Thane. He stated that there was a collision between the bus and the motor cycle and the motor cycle was thrown away at the distance of 50 to 60 feet. The persons on the said motor cycle were also thrown away. He stated that the bus went towards right side after the accident and stopped in a mound of earth. There was a wire fencing and the Bus got entangled in that fencing and stopped. In the cross examination, he stated that there is admittedly a petrol pump on the eastern side of the spot of the accident. The motor cyclist came on the road from eastern side. He stated that he saw the motor cycle when it was at a distance of about 100 feet from the bus. He admitted that the police have not recorded his statement.

6. Shri Kisan Ladkya Gumgame is the Witness No.5 of the Appellant. He was serving in New Popular petrol Pump at Banhal near Bhiwandi at the relevant time. He stated that the accident took place on 15th March 1985 at about 7.30 a.m. He stated the motor cyclist took petrol for his motor cycle and

he started towards Bhivandi. He stated that the State Transport Bus came from Bhivandi side in a high speed. He stated that the motor cyclist had crossed the road and turned towards Bhivandi and the S.T. bus went to on its wrong side and gave a dash to the motor cycle. In the cross examination he stated that he heard noise of dash and his attention was diverted towards road. Thus, his cross examination makes it clear that he has not actually seen the impact as he was at the relevant time in the godown of the petrol pump.

8. Bhagwan Sajan Patil is the driver of the Respondent-Corporation. He stated that he started return journey from Nasik at about 3.30 a.m. He stated that the bus stopped at Bhivandi. He further stated in his evidence as follows :

. "From Bhiwandi I reached upto Railway bridge. The normal speed of the bus was between 15 to 20 K.M.P.H. when there was traffic on the road. After leaving the bridge, there was Highway the bus between 30 to 40 K.M.P.H. I was on the left side of the road. On that road, on that left side, there was a new Petrol Pump recently started. This Petrol Pump is just adjacent the road. When I was driving and coming towards Thane, suddenly from the petrol pump one motor cyclist came ahead and dashed against my bus on the left side. I immediately turned the vehicle to the right. I stopped the vehicle after taking the

side of the road, on the right side. The petrol pump was situated in the bushes and was not visible from the road. There are no side roads to the right side. I got down from the bus after dash. I was driving the vehicle with care and caution. The accident did not occur because of my mistake or rash and negligent driving. I had no idea about the motor cycle dashed against the bus...."

9. Perusal of his cross examination shows that his version the petrol pump was not visible from on right side is not at all challenged in the cross examination. His version in the examination-in-chief that from the petrol pump the motor cyclist suddenly came and dashed against the bus on its left side. This has also not been challenged in the cross examination. The version of the witness Latif Khan is contrary to the case made out by the Appellant. In the cross examination he stated that he saw the motor cycle when it was at the distance of about 100 feet from the bus. No effort was made by the driver o the bus to avoid accident. However, the petrol pump was situated and was not visible from the road. The motor cyclist did not take care while entering the main road. He did not stop his vehicle before entering the main road and came directly on the main road from the petrol pump. Considering all these aspects, there is an apportionment of negligence made as 60% and 40%. The learned Member of the tribunal appears to be justified in recording the said finding

which is based on the evidence on record.

10. So far as the quantum of compensation is concerned, the Appellants have examined the witness No.2 Shri Keshav Moreshwar Patankar who was serving as a supervisor with M/s. G.G.Dandekar & Company,Bhiwandi. In the cross examination he stated that according to the school leaving certificate of the deceased, his date of birth was 1st January 1958. He stated that the deceased was a permanent employee of the said company. Considering the income of the deceased at the time of accident, the dependency is taken by the learned Member of the tribunal at Rs.700/- and the multiplier of 15 has been applied.

11. In the case of T.N.Transport Corporation Ltd. Vs. S. Rajapriya and others (2005 6 S.C.C. page 236), the Apex Court has observed that the highest multiplier is 18 which is to be applied to the age group of 21 to 25 years when an ordinary Indian Citizen starts independently earning and the lowest would be in respect of a person in the age group of 60 to 70. In the case before the Apex Court the age of the deceased was 38 years and therefore, multiplier of 12 was applied. Considering the decision of the Apex Court and considering the fact that the age of the deceased was 27 years at the time of accident, the multiplier of 16 ought to have been applied. To that extent, enhancement in compensation will have to be granted. However, the liability of the Respondent will be to

the extent of 40%. The Respondent will have to pay proportionate costs of the claim and this Appeal along with the interest. Thus the total compensation payable will be 40% of Rs.1,44,400/- (Rs.8400 X 16+Rs.10,000/-). The amount payable to the Appellant will be Rs.57,760/- being the 40% of the said amount.

12. Hence, I pass the following order :

(i) The impugned award is modified. The compensation payable will be Rs.57,760 instead of Rs.54,400/-. The Appellant will be entitled to proportionate costs of the claim as well as of this Appeal. The rate interest awarded by the Tribunal is confirmed.

(ii) The additional amount will be deposited by the Respondent-Corporation within a period of six months from today with the Tribunal.

JUDGE